

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 966 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAGVANJIBHAI MOHANBHAI

CHAUHAN

Versus

RAJESHKUMAR MULJIBHAI

Appearance:

MR KARTIKEY P RAWAL for Petitioner

MR KS JHAVERI (Absent) for Respondent No. 1 to 4

MR DN PATEL ADDL. PUBLIC PROSECUTOR for
Respondent No. 5

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 01/09/98

ORAL JUDGEMENT

Original complainant has preferred this appeal against the order of acquittal recorded by Judicial Magistrate First Class, Muli on 8.9.1989 in Criminal Case No. 89/86 wherein the accused were tried for an offence punishable under section 192.A of the Gujarat Panchayat Act.

2. Short facts of the case are:

2.1 Respondents No.1 to 4, [original accused No.1 to 4] are the partners of a firm known as Rajeshkumar Muljibhai. On the allegation that on 10.6.1986, 100 bags of Cottonseed Cake valued at Rs.10,300/- were imported into the octroi limit of Sara Gram Panchayat without payment of Octroi duty, prosecution came to be lodged against the accused. As per the prosecution case, as per item No. 71, the duty payable is Rs.2/- per Rs.100/-, and accordingly, the accused were required to pay a sum of Rs.206/- as octroi. The prosecution case is that Cottonseed cake is not specifically listed in the Index, and, therefore, is required to be levied as per item No.71; That octroi was demanded from the accused and it was stated that the amount will be paid later on, despite the fact that the goods were imported into the octroi limits of Sara Gram Panchayat. The prosecution case is that as the accused failed to pay the amount, they have committed offence punishable under section 192.A of the Gujarat Panchayat Act.

3. On going through the evidence, it transpires that vide Exh.50, on 21.5.1986, Gram Panchayat, in its meeting passed a resolution that the Octroi collector is collecting octroi at the rate of Rs.2/- per Rs.100/- on Cottonseed cake; Earlier it was decided to collect octroi at the rate of Re.1/- per Rs.100/-; The Panchayat, therefore passed a resolution to collect octroi at Re.1/per Rs.100/- on Cottonseed cake and since thereafter, octroi is collected accordingly. On 10.6.1986 accused imported Cottonseed Cake within the octroi limit of village Sara and on the next date, i.e. 11.6.1986 the accused submitted in writing to the Sarpanch that the Octroi Collector has refused to accept the amount as per the resolution passed by the Panchayat. It is further disclosed in the letter that the accused is willing to pay the octroi as per the resolution passed by the Panchayat.

4. In the cross-examination, the complainant has admitted that as per the resolution, after 30.5.1986, octroi is recovered from merchants at the rate of one percent. The trial Court observed that it is not the function of the criminal Court to decide whether the resolution is required to be acted upon or not and further observed that the Court could not opine about the validity and legality of the said resolution.

5. In view of the aforesaid reasoning, it cannot be

said that the accused committed an offence as alleged, more particularly in the instant case, the accused were ready to pay octroi at the time of import but from the record it appears that the complainant was insisting to recover octroi at two percent which he was not authorised to collect. In this view of the matter, it cannot be said that the order passed by the trial Court is perverse or that the view taken by the trial Court is not a possible view.

6. Having gone through the records, this Court is in agreement with the view taken by the trial Court. I am, therefore, not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417, which reads as under:-

" This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice"

7. Moreover, this is an appeal against an order of acquittal. The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1). the view of the trial judge as to the credibility of the witnesses; (2). the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3). the right of the accused to the benefit of any doubt, and, (4). the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

8. In the result, this appeal fails and stands

dismissed.

csm./ -----